

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:09CV98-1-V
5:05CR211-V

DAGOBERTO SANTAMARIA FLORES,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER comes before the Court upon Petitioner’s Motion for Reconsideration Pursuant to Rule 60(b)(4), (Doc. No. 8), filed July 12, 2010.

On August 17, 2009, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence. In his Motion to Vacate Petitioner alleged that this Court was “without jurisdiction to expose [him] to a sentence under the statutory penalty provision of 21 U.S.C. § 841(b)(1)(A) for a statutory penalty provision conviction under 21 U.S.C. § 841(b)(1)(c)” (Doc. No. 1.) On August 21, 2009, after conducting an initial review of Petitioner’s Motion to Vacate, this Court concluded that Petitioner’s claim was procedurally defaulted, or in the alternative, procedurally barred. (Doc. No. 2.) On September 2, 2009, Petitioner filed a Motion to Reconsider pursuant to Rule 59(e), arguing that he did not procedurally default his claim because jurisdictional challenges are more properly raised in the § 2255 context than on direct appeal. In addition, Petitioner argued that he did not default this claim because it was the responsibility of the court to raise this claim sua sponte. (Doc. No. 4.) On October 13, 2009, this Court denied Petitioner’s

Motion to Reconsider. (Doc. No. 5.)

Petitioner has now filed another Motion to Reconsider. Petitioner argues that the dismissal of his motion to vacate should be vacated because this Court acted in a manner “inconsistent with due process of law, because the claim that petitioner alleged was properly brought under section 2255 petition, which provides the avenue for a prisoner to attack his sentence after the conclusion of trial and appeal when the court was without jurisdiction to expose such a sentence under a progressively higher statutory penalty provision.” Petitioner’s argument provides no basis for this Court to vacate its August 21, 2009, Order.

THEREFORE, IT IS HEREBY ORDERED that Petitioner’s Motion for Reconsideration (Doc. No. 8) is **DENIED**.

Signed: July 15, 2010

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
United States District Judge

